In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1087

HOLBROOK THAYER ASHTON, II, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the United States District Court for the Eastern District of Missouri for failure to report for and submit to induction into the Armed Forces, in violation of 50 U.S.C. App. 462. He was sentenced to imprisonment for five years, with eligibility for parole after one year. The conviction was affirmed on December 3, 1968 (Pet. App. A), and a petition for rehearing was denied on December 24, 1968 (Pet. App. B). On January 17, 1969, Mr. Justice White extended the time within

which to file a petition for a writ of certiorari until February 22, 1969. The petition was not filed until February 25, 1969, and is therefore out of time under Rule 22-2 of the Rules of this Court. In any event, there is no warrant for further review.

Petitioner here contends only that draftees may not be used in an undeclared war and that the war in Vietnam is illegal (Pet. 2). Since these claims would in no event provide a valid defense to a prosecution for refusal to submit to induction (*United States* v. *Mitchell*, 369 F. 2d 323, 324 (C.A. 2), certiorari denied, 386 U.S. 972), the questions petitioner seeks to raise are not presented in the circumstances of the instant case. Moreover, this Court has rejected, in the past several years, invitations to consider such issues. *United States* v. *Mitchell, supra; Luftig* v. *McNamara*, 373 F.2d 664 (C.A.D.C.), certiorari denied, 387 U.S. 945; *Mora* v. *McNamara*, 387 F.2d 862 (C.A.D.C.), certiorari denied, 389 U.S. 934.

It is therefore respectfully submitted that the petion for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1969.

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